

ROUTING AND RECORD SHEET

Approved For Release 2004/10/08 : CIA-RDP81M00980R001800050127-8

SUBJECT: (Optional)

78-0122

FROM:

Office of General Counsel
7D07 Hqs.

EXTENSION

7541

NO.

DATE

19 May 1976

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. Deputy Director of
Medical Services
1D4054 Hqs.21 MAY
197624 MAY
1976

SJS

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2.

D/MS

24 MAY
1976

25M

CMB

3.

C/PS

24 MAY
1976

26M

Jm

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Attached is a copy of the results of my survey of the contribution your office could make to the need of the DDA for a full-time OGC attorney. If you have any comments or thoughts, do not hesitate to call. Your review by 3 June would be appreciated. We will try to provide guidance regarding the unanswered legal issue (paragraph 3.c.) as soon as we can get to the matter. Returned herewith is the Overview of OMS which you previously provided pursuant to the survey.

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Assistant General Counsel
General Law Division

1-2243 for info
and discussion
if desired. Jm

There is no reference
to Executive Order 11905
which refers specifically to
medical services in support
of agency activities. I believe
there are other Executive Orders
concerning Federal health programs
which are applicable. CMB
Letter to DDA 5/25/76

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1. The survey of the Office of Medical Services (OMS) consisted of reviewing several key documents describing OMS and discussions with the Director and Deputy Director of the office and the chiefs of the four divisions and the Psychological Services Staff, thereof. The document review included the following:

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[REDACTED]

b. The Support Services Historical Series: Overview
of the Office of Medical Services, 1947-1972 (OMS-6) February 1973

[REDACTED]

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Approximately 4 man days were spent making the survey.

2. Several legal areas were identified which, from time to time, present legal questions for OMS. Several of these areas are outlined below. Based on the survey, it has been concluded that OMS has a SELDOM to OCCASIONAL need for legal counsel and would make a significant contribution to a need of the Directorate of Administration for a full-time attorney on assignment from OGC.

3. During the survey several legal questions were discussed that appear to either need further OGC study or require further OGC guidance to OMS.

a. Whether the protection offered by the proposed amendments to chapter 55 of Title 10 of the U.S. Code (see OGC 76-1386 dated 18 March 1976) will protect Agency medical personnel acting overseas from personal liability for malpractice while acting within the scope of their employment.

b. Whether "Agency Medical Personnel" as used in our memorandum for Director of Medical Services (OGC 76-1201) dated 9 March 1976 includes the independent contractors employed by OMS.

c. The status of the "good Samaritan" rule in the three local jurisdictions. Such information is presented in OMS first aid training, particularly in such courses as their cardiac first aid course.

4. Section 4(5) of the Central Intelligence Agency Act of 1949, as amended, (50 U.S.C. 403e(5)) specifies in some detail the Agency's authorities in the medical area. It provides the following authorities:

a. In the event of illness or injury requiring the hospitalization of an officer or full time employee of the Agency, not the result of vicious habits, intemperance, or misconduct on his part, incurred while on assignment abroad, in a locality where there does not exist a suitable hospital or clinic, pay the travel expenses of such officer or employee by whatever means he shall deem appropriate and without regard to the Standardized Government Travel Regulations and section 73b [now section 5731 (a)] of Title 5, to the nearest locality where a suitable hospital or clinic exists and on his recovery pay for the travel expenses of his return to his post of duty. If the officer or employee is too ill to travel unattended, the Director may also pay the travel expenses of an attendant;

b. Establish a first-aid station and provide for the services of a nurse at a post at which, in his opinion, sufficient personnel is employed to warrant such a station: Provided, That, in his opinion, it is not feasible to utilize an existing facility;

c. In the event of illness or injury requiring hospitalization of an officer or full time employee of the Agency, not the result of vicious habits, intemperance, or misconduct on his part, incurred in the line of duty while such person is assigned abroad, pay for the cost of the treatment of such illness or injury at a suitable hospital or clinic;

d. Provide for the periodic physical examination of officers and employees of the Agency and for the cost of administering inoculations or vaccinations to such officers or employees.

During the survey it became evident that these authorities may be too narrow and may not cover the scope of several of the Agency's medical activities. For example, the regional medical program seems to exceed the scope of a literal interpretation of the Act, particularly subsection b.

above. Further, the Agency, at least on one occasion, has adopted the authority of the Foreign Service Act. For example in 1956, the DCI adopted an amendment to that Act which provides authority to provide medical benefits for dependents whose principles are stationed abroad. Authority for such adoption is Section 8 of the CIA Act of 1949, as amended. Such authority could be subject to the challenge because of the rules of statutory construction. This office, in memoranda to the DCI dated 28 August 1967, has taken the position, however, that the DCI does have the legal authority to make such adoptions. Several remedies are available that would clearly strengthen the Agency's legal position in this field:

a. Amend the statute to make the medical authorities more general and broad. Such may be appropriate if other legislative changes are introduced.

b. Employ the authorities found in 5 U.S.C. 7901. Such grants agency heads the authority to establish health service programs after consultation with the Secretary of Health, Education and Welfare. Having found no indication of such consultation in the past, there seems to be no current basis to rely on the authorities of 5 U.S.C. 7901.

We recognize that an argument based on certain statutory construction principles could be made that the Agency is limited to the authorities of the CIA Act in the medical field, and thus could not use the authorities in 5 U.S.C. 7901. We do not find, however, such an argument totally persuasive. Obviously, a. above would be the best solution.

5. The Director and Office of Medical Services have certain responsibilities and authorities related to the medical field as expressed [redacted] These authorities, at least in part, can be traced directly to an authorization by the DCI. Early evidence of such a delegation is found [redacted] dated 1 December 1950, signed by DCI Smith wherein the head of the medical office was charged with the development, preparation and execution of the Agency medical program and with providing required medical service and support to Agency activities. In accordance with that authority and responsibility he (a) recommends the establishment of Agency medical policies and establishes procedures for their implementation, (b) conducts a preventive medicine program for the Agency including providing emergency detailees and their dependents while on duty, (c) establishes, maintains, controls and technically supervises any overseas medical programs, (d) furnishes medical supply service

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for all Agency domestic and foreign stations and activities, (c) establishes and maintains physical requirements standards for the various Agency positions, (f) provides necessary physical examinations and immunizations for Agency personnel, and (g) establishes and maintains a medical consultant program. The head of this office reported to the Assistant to Deputy for Administration. These same delegations were signed by DCI Dulles on 19 January 1951 [REDACTED] of that date). While the general language and format of the regulation has been subsequently changed by subordinates to the DCI and while the head of the medical office has always reported to the Agency's chief administrative officer, there is no record of the DCI rescinding his previously authorized delegation to the head of the medical office.

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ROUTING AND RECORD SHEET

OMS (DDA)

SUBJECT: (Optional)

Overview of OMS

OIC - 78-0461

FROM:

EXTENSION

NO.

DDA 78-0422

DATE

31 Jan 78

TO: (C
building)

DATE

OFFICER'S
INITIALS

COMMENTS (Number each comment to show from whom
to whom. Draw a line across column after each comment.)

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Bob:

OMS provided me with
the attached which reflects
the Agency's medical activities
authorities. The bottom of
page two and the remainder
of para four relate to the
fact that a statute concerning
medical activities should
be general and broad.

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